

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0101V

SAMUEL BEYER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 30, 2024

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.

Bridget Corridon, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On January 5, 2021, Samuel Beyer ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). On May 14, 2021, he filed an amended petition. ECF No. 12. Petitioner alleged that he suffered a right shoulder injury related to vaccine administration ("SIRVA"), a defined Table injury or, in the alternative, a causation-in-fact injury, after receiving an influenza vaccine on November 22, 2019. Amended Petition at 1, ¶¶ 5, 34.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

On January 26, 2024, I issued a decision awarding compensation to Petitioner based on the parties' stipulation. ECF No. 50.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$40,640.50 (representing \$37,946.50 for fees and \$2,694.00 for costs). Petitioner Motion for Attorneys' Fees and Costs, filed June 4, 2024, ECF No. 55. In accordance with General Order No. 9, counsel for Petitioner represents that Petitioner incurred no out-of-pocket expenses. ECF No. 55-4.

Respondent reacted to the motion on June 5, 2024, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, 3 n.2, ECF No. 56. Petitioner filed no reply.

Having considered the motion along with the invoices and other proof filed in connection, I find a reduction in the amount of fees to be awarded appropriate, for the reason set forth below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. *See Savin v. Sec'y of Health & Hum. Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Hum. Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. *See Sabella v. Sec'y of Health & Hum. Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Hum. Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Hum. Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees

and costs sought] at the time of the submission.” *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner’s counsel “should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission.” *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

The rates requested for work performed through the end of 2024 are reasonable and consistent with our prior determinations, and will therefore be adopted.

However, a few of the tasks performed by Ms. Grigorian (another attorney at Petitioner’s counsel’s law firm) are more properly billed using a paralegal rate.³ “Tasks that can be completed by a paralegal or a legal assistant should not be billed at an attorney’s rate.” *Riggins v. Sec’y of Health & Hum. Servs.*, No. 99-382V, 2009 WL 3319818, at *21 (Fed. Cl. Spec. Mstr. June 15, 2009). “[T]he rate at which such work is compensated turns not on who ultimately performed the task but instead turns on the nature of the task performed.” *Doe/11 v. Sec’y of Health & Hum. Servs.*, No. XX-XXXXV, 2010 WL 529425, at *9 (Fed. Cl. Spec. Mstr. Jan. 29, 2010). **This reduces the amount of fees to be awarded by \$347.40.**⁴

Regarding the time billed, I note this case required additional briefing regarding the factual issues of situs and severity. See Petitioner’s Brief re: Situs and Severity Requirement, filed Sept. 23, 2022, ECF No. 29; Section 11(c)(1)(D)(i) (the Vaccine Act’s severity requirement). Petitioner’s counsel expended approximately 14.3 hours drafting the brief related to these issues. ECF No. 55-2 at 17-18. I find this time to have been reasonably incurred. (And all time billed to the matter was also reasonably incurred.)

ATTORNEY AND PETITIONER COSTS

Petitioner requests \$2,694.00 in overall costs and has provided receipts for all expenses. ECF No. 55-3. This total includes \$1,525.00 paid to Petitioner’s treating orthopedist, representing \$400.00 for a 30-minute phone call and \$1,125.00 for 2.5 hours of work preparing a narrative statement at an expert hourly rate of \$450, work that was

³ These entries, drafting basic documents such as an exhibit list, notice of filing, and statement of completion, are dated as follows: 1/20/21 (one-half of the time), 5/14/21, 9/23/22 (three entries). ECF No. 55-2 at 4, 6, 18.

⁴ This amount consists of $(\$325 - \$172) \times 0.9 \text{ hrs.} + (\$410 - \$177) \times 0.9 \text{ hrs.} = \347.40 .

helpful to the resolution of this case. *Id.* at 14-16, 18-19. I have reviewed the requested costs and find them to be reasonable. And Respondent offered no specific objection to the rates or amounts sought. ECF No. 56.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). **I award a total of \$40,293.10 (representing \$37,599.10 for fees and \$1,694.00 for costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, Jeffrey S. Pop.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.⁵

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁵ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.